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 and SIEMENS AKTIENGESELLSCHAFT

**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

NEUROGRAFIX, a California corporation;  
 WASHINGTON RESEARCH  
 FOUNDATION, a not-for-profit Washington  
 corporation,

Plaintiffs,

vs.

SIEMENS MEDICAL SOLUTIONS USA,  
 INC., a Delaware corporation; and SIEMENS  
 AKTIENGESELLSCHAFT, a German  
 corporation,

Defendants.

CASE NO. CV 10-1990 MRP(RZX)  
**DECLARATION OF SEAN M.  
 MCELLOWNEY IN SUPPORT  
 OF SIEMENS' MOTION FOR  
 PARTIAL SUMMARY  
 JUDGMENT OF INVALIDITY  
 BASED ON INDEFINITENESS  
 OF "CONSPICUITY" IN CLAIMS  
 1, 3, 7, 11, 12, 18, AND THEIR  
 ASSERTED DEPENDENT  
 CLAIMS IN U.S. PATENT NO.  
 5,560,360**

**The Hon. Mariana R. Pfaelzer  
 United States District Court Judge**

**Hearing date: October 5, 2011  
 Time: 11 a.m.  
 Location: Courtroom 12**

SIEMENS MEDICAL SOLUTIONS USA,  
INC.,

Counterclaim Plaintiff,

vs.

NEUROGRAFIX, and WASHINGTON  
RESEARCH FOUNDATION,

Counterclaim Defendants.

I, Sean M. McEldowney, hereby declare:

1. I am an attorney at the law firm of Kirkland & Ellis LLP, which represents Siemens Medical Solutions USA, Inc. and Siemens Aktiengesellschaft (collectively "Siemens") in the above-captioned matter.

2. Attached hereto as Exhibit IND1 is a true and correct copy of excerpts from the deposition of Michael N. Brant-Zawadzki, M.D., dated August 16, 2011.

3. Attached hereto as Exhibit IND2 is a true and correct copy of the opening expert report of R. Nick Bryan, M.D., dated July 22, 2011.

4. Attached hereto as Exhibit IND3 is a true and correct copy of the rebuttal expert report of R. Nick Bryan, M.D., dated August 8, 2011.

5. Attached hereto as Exhibit IND4 is a true and correct copy of Exhibit C to the opening expert report of Michael E. Moseley, Ph.D., dated January 24, 2011.

6. Attached hereto as Exhibit IND5 is a true and correct copy of Exhibit A to the rebuttal expert report of Aaron G. Filler, MD., dated February 1, 2011.

7. Attached hereto as Exhibit IND6 is a true and correct copy of excerpts from the rebuttal expert report of Aaron G. Filler, M.D., dated February 1, 2011.

8. Attached hereto as Exhibit IND7 is a true and correct copy of excerpts from *Markman* Hearing dated March 24, 2011.

9. Attached hereto as Exhibit IND8 is a true and correct copy of S. Bisdas et al., *Reproducibility, Interrater Agreement, and Age-Related Changes of Fractional*

*Anisotropy Measures at 3T in Healthy Subjects: Effect of the Applied b-Value*, 29 Am. J. Neuroradiology 1128 (2008); NEURO00036251-256.

10. Attached hereto as Exhibit IND9 is a true and correct copy of D. Bonekamp et al., *Diffusion Tensor Imaging in Children and Adolescents: Reproducibility, Hemispheric, and Age-Related Differences*, NIH Author Manuscript (34 Neuroimage 733) (2007); NEURO00036257-276.

11. Attached hereto as Exhibit IND10 is a true and correct copy of R. Boellaard et al., *Effects of Noise, Image Resolution, and ROI Definition on the Accuracy of Standard Uptake Values: A Simulation Study*, 45 J. Nuclear Med. 1519 (2004).

12. Attached hereto as Exhibit IND11 is a true and correct copy of N.C. Krak et al., *Effects of ROI Definition and Reconstruction Method on Quantitative Outcome and Applicability in a Response Monitoring Trial*, 32 Eur. J. Nuclear Med. & Molecular Imaging 294 (2005).

13. Attached hereto as Exhibit IND12 is a true and correct copy of Exhibit C to the opening expert report of R. Nick Bryan, M.D., dated July 22, 2011.

14. Attached hereto as Exhibit IND13 is a true and correct copy of L.P. Clarke et al., *MRI: Stability of Three Supervised Segmentation Techniques*, 11 Magnetic Resonance Imaging 95 (1993); NEURO00036277-288.

15. Attached hereto as Exhibit IND14 is a true and correct copy of E. Jackson et al., *Accuracy and Reproducibility in Volumetric Analysis of Multiple Sclerosis Lesions*, 17 J. Computer Assisted Tomography 200 (1993); NEURO00036289-294.

16. Attached hereto as Exhibit IND15 is a true and correct copy of A. Ozturk et al., *Regional Differences in Diffusion Tensor Imaging Measurements: Assessment of Intrarater and Interrater Variability*, 29 Am. J. Neuroradiology 1124 (2008); NEURO00036324-327.

17. Attached hereto as Exhibit IND16 is a true and correct copy of excerpts from the opening expert report of Michael E. Moseley, Ph.D., dated January 24, 2011.

18. Attached hereto as Exhibit IND17 is a true and correct copy of Exhibit 2 to the rebuttal expert report of R. Nick Bryan, M.D., dated August 8, 2011.

I hereby declare, under penalty of perjury, that the foregoing statements are true and correct to the best of my personal knowledge.

Respectfully submitted,

Dated: August 24, 2011

/s/ Sean M. McEldowney  
Sean M. McEldowney

**CERTIFICATE OF SERVICE**

I hereby certify that on August 24, 2011, a copy of the foregoing DECLARATION OF SEAN M. McELDOWNEY IN SUPPORT OF SIEMENS' MOTION FOR PARTIAL SUMMARY JUDGMENT OF INVALIDITY BASED ON INDEFINITENESS OF "CONSPICUITY" IN CLAIMS 1, 7, 11, 12, 18, AND THEIR ASSERTED DEPENDENT CLAIMS IN U.S. PATENT NO. 5,560,360 was served upon counsel of record for Plaintiffs registered with the Court's CM/ECF system.

/s/Sean M. McEldowney